

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation of the  
Insurance Agent License of Thomas A.  
Costigan, 211 North Davis Avenue,  
Litchfield, MN 55355-2325; Tax ID No.  
481468552.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before George A. Beck, Administrative Law Judge, on June 22, 2004, at 9:30 a.m., at the Office of Administrative Hearings, 100 Washington Avenue South, Minneapolis, Minnesota.

The Department of Revenue was represented by Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-0220. Thomas A. Costigan, 211 North Davis Avenue, Litchfield, MN 55355-2325, appeared on his own behalf.

The parties agreed that the record in this matter would be kept open for possible settlement until July 6, 2004. The record in this matter closed on July 6, 2004.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Dan Salomone, Commissioner, MN Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## STATEMENT OF ISSUE

Should Respondent's Insurance Agent License be revoked for failure to pay delinquent taxes, penalties and interest?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On January 28, 2004, the Department sent a Notice of Intent to Revoke License to Thomas A. Costigan indicating that income tax returns for 2000-02 were overdue. Additionally, an amount due of \$21,946.77 for previous years was stated in the Notice. The Notice also indicated that the Department intended to notify the Minnesota Department of Commerce to revoke his Insurance Agent License. The Notice went on to state that Mr. Costigan could request a hearing before the Office of Administrative Hearings by stating, in writing, the basis for his protest and submitting it by February 28, 2004.

2. On February 27, 2004, Mr. Costigan requested a hearing, indicating that he intends to file and pay overdue taxes.

3. On May 18, 2004, a Notice and Order for Hearing was issued by the Department, and served on Mr. Costigan by U.S. Mail. The Notice set a hearing for June 22, 2004, at the Office of Administrative Hearings in Minneapolis.

4. Mr. Costigan appeared at the hearing. He acknowledged that he had not filed returns for 2000, 2001 and 2002 and that he owed \$21,940.54 in taxes, penalty, and interest for tax years 1993-97 and 1999.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent has not filed income tax returns for 2000-02 within the meaning of Minn. Stat. § 270.72, subd. 1 and has failed to pay income tax as required by law.

4. As a result of the Respondent's failure to file tax returns, and pay tax due and owing, the Commissioner of Revenue may issue a Notice of License Revocation, pursuant to Minn. Stat. § 270.72, subd. 1, to the Minnesota Department of Commerce indicating that the Department of Commerce may not renew and must revoke the Respondent's Insurance Agent License.

Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

#### RECOMMENDATION

That the Commissioner of Revenue issue a Notice of License Revocation, to the Minnesota Department of Commerce indicating that the Department of Commerce may not renew and must revoke the Agent License of Thomas A. Costigan.

Dated this 8th day of July, 2004

s/George A. Beck  
GEORGE A. BECK  
Administrative Law Judge

Reported: Taped Recorded  
One Tape

#### MEMORANDUM

The Department's proposed revocation of Mr. Costigan's Insurance Agent License is based on Minn. Stat. § 270.72, subd. 1, which states:

Subdivision 1. **Tax clearance required.** The state or a political subdivision of the state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed. A licensing authority that has received a notice from the commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the commissioner issues a tax clearance certificate and (b) the commissioner or the applicant forwards a copy of the clearance to the authority. The commissioner may issue a clearance certificate only if

the applicant does not owe the state any contested delinquent taxes, penalties, or interest and has filed all required returns.

Mr. Costigan was notified on January 28, 2004, that revocation of his Insurance Agent License would result from his continued failure to file tax returns for 2000-2002. More than ninety days have elapsed since that notice. There is also evidence in the record regarding delinquent income taxes owed in the amount of \$21,940.54 for prior years. Mr. Costigan has acknowledged not filing tax returns for 2000-02 and being delinquent in paying his income tax. The Commissioner is therefore entitled to issue the appropriate notice to the Department of Commerce. The parties agreed to leave this record open through July 6, 2004, in hopes a settlement would be reached. However, the ALJ has not received any indication that this matter has been resolved.

**G.A.B.**